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Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1999

BILLY HUGHEY COCKRELL,
CAROLYN VIRGINIA COCKRELL and
WILLIAM JEFFERY COCKRELL, a minor child

Petitioner,

V.

THE STATE OF MISSISSIPPI,
CITY OF SOUTHAVEN

Respondent.

Petition For Writ Of Certiorari To The
Mississippi Supreme Court

PETITION FOR WRIT OF CERTIORARI

The Cockrell Family
P O Box 791
New Albany, MS 38652
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in propria persona

72pp

QUESTION PRESENTED

This Supreme Court should exercise its judiciary power and thereby grant these Petitioners' Petition for Writ of Certiorari to resolve the conflict at law, the constitutionality of a state statute Mississippi Code Annotated MCA § 11-27-5(1972) appendix p. 67, conflicts with the USA Const. Art. VI § 2 when used in relation to or in conjunction with an Act of Congress The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, 84 Stat. 1894; amended under 42 USC § 4601 et seq., regulated and implemented under 49 CFR Part A, B & C; and to resolve a controversy between a State or the Citizens thereof and to controversies to which the United States shall be a party, and to resolve the Federal question of public interest of the conflict with applicable decisions, **stare decisis**, of this Supreme Court.

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OPINIONS BELOW

The written published decision of the Supreme Court of Mississippi, appears in Appendix page 33 of this Petition's Appendix, as these Petitioners Petition for REHEARING EN BANC, was denied. Pittman,P.J., Not Participating, on the 4th day of March 1999.

♦

JURISDICTION

Jurisdiction is conferred upon the United State Supreme Court pursuant to the U.S.A. Constitution Article III § 1 and 2; Rules of the Supreme Court of the United States Rule 10.1 (c); Title 28 USC § 1254 (1).

♦

CONSTITUTIONAL PROVISIONS

USA Constitution, Article VI § 2; to wit:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

STATEMENT OF THE CASE

Relevant extensive background facts are necessary and imperative in this case.

Petitioners were the defendants and have defended two separate causes of action, of which both were appealed, we have proceeded through four Mississippi court systems. Petitioners will be unable to cite the record extensively, although we have paid for the record proceeding out of the said courts, as all the certified records and other imperative, necessary, material and relevant documents are locked up by Mississippi courts, agents and assigns, and Petitioners have not been allowed access to said records, details thereof will be shown as we proceed through the statement of the case. Therefore, Petitioners ask this court to waive the requirement of citing the relevant pleading i.e. where it can be found, as we proceed to plead our relevant argument herein, to secure Procedural Due Process, Due Process of Law and Equal Protection of the Laws, USA Constitution, Article XIV.

In 1986, the Memphis Shelby County Airport Authority, a political subdivision existing under the laws of the State of Tennessee, implemented the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, 84 Stat. 1894; 42 USC § 4601 et seq. Pulbic Law 91-646 as codified and amended under 42 U.S.C. 4601 et seq and regulated and implemented under 49 C.F.R. Part 24 A,B & C - Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. These all constitute Federal Acts, Federal Laws, and mandated Acts of Congress.

This Supreme Court of the United States should exercise its supervisory power to decide an important ***question*** of federal law presented herein as a Mississippi Court of last resort has decided an important question of federal law, that has **not** been, but should be, settled by this Court, as the Mississippi Court decision **conflicts** with relevant decisions of this Court; as this Court is to use its judiciary power to decide the Laws of the United States and to controversies that the United States is a party, or controveries between a state

or the citizens thereof, as an actual conflict exist between Mississippi law and Federal law.

The Federal program, the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, hereinafter referred to as the '**ACT**', Congress established the '**ACT**' and passed thereon. The Memphis Shelby County Airport Authority of Memphis, Tennessee hereinafter referred to as the '**Authority**', sought to expand the Memphis International Airport (Tennessee) to accommodate the increase flow of air traffic and noisier airplanes. The Authority established a Noise Abatement Program to measure the ldns within a certain radius of the said Authority.

The Authority hired an acoustic sound company to set up and monitor sound meters to measure the sound (ldns) of incoming and outgoing aircraft to and from the Memphis International Airport, located ½ mile or more from the Tennessee -***Mississippi*** boundary lines, therefore because of the proximate location of the said Airport, the Noise Abatement Program, the noise extended into Mississippi therefore the meters were set

up to monitor air traffic and aircraft noise within a prescribed radius of said Authority. Once the ldns were monitored and established, then the sound contour maps were drafted. The sound effected more than 1300 homes in Tennessee and Mississippi. The sound contour maps were then submitted to the FAA, the Secretary of Transportation and approved by an Act of Congress, with funding via Federal Grant Money, to be approved by an Act of Congress.

The Cockrell home, owned by a minor child, William Jeffery Cockrell, was situated directly in the middle of the Contour Map, as to the Mississippi homes effected.

The Authority was required by Federal Law to send out notices that it had established a Noise Abatement Program under Federal law, which would be regulated under Federal Law, said notice had to be detailed as to the prerequisites of the Federal Law. First, the Federal Program was voluntary, and no applicable statutes of limitations existed. Second, if a home or business owner wanted to volunteer to sell his home or business location to the

Authority, said owner would agree to a *voluntary* appraisal. Third, the party would enter into voluntary negotiations with the Authority. If the parties thereto met an amenable agreement, then the property was sold to the Authority through the Federal Program. The Authority acquired Federal funding through Federal Grant Moneys, pursuant to Federal Law, approved by an Act of Congress. If, the owner of the property sought to be purchased by Authority, could not reach an amenable agreement, as negotiations had failed, negotiations ended under the voluntary program. The home or business owner still retained the status of the protection of the said Federal Law, with no statute of limitations, therefore anytime in the future, the property owner could seek to renegotiate a selling price.

49 CFR Subtitle A,B & C § 24.1 through §24.10 is the Federal Act relevant hereto. Subpart B §24.101 through § 24.108 encompasses the requirements of the federal acquisition. Subpart C § 24.201 through § 24.208 encompasses the Relocation Requirements. Subpart B, encompasses the acquisition of

real property and the prerequisites thereof. In Subpart B § 24.101(a)(3) mandates; to wit:

> "(3) The acquisition of real property from a Federal Agency, State, or State agency, if the Agency desiring to make the purchase does **not** have authority to acquire the property through condemnation."

Before, implementation of Subpart C the property owner must have received the Federal Grant Money as just compensation for his property, with a transfer of title to the Authority, the buyer. Thereafter Subpart C of the Act, is applicable. If a property owner, protected under the Federal law does not volunteer into the Federal Program or does not reach an amenable agreement with the Authority then there exist no provisions under the Act for condemnation, 49 CFR Subtitle B § 24.101(a)(3) et seq.

It is well settled and established that "Congress may preempt state law by so stating in explicit terms on the face of a statute. "Environmental Encapsulating Corp. v. New York City, 855 F. 2d 48, 62 (2nd Cir.1988) at page 53

[1-3] citing Jones v. Rath Packing Co., 430 U.S. 519, 525, 97 S.Ct. 1305. "[F]ederal regulations as well as federal statutes can preempt state law". Hillsborough, 471 U.S. at 713, 105 S.Ct. at 2375. The clear intent of the Federal statute must appear on its face, as it does in 49 CFR Subtitle B § 24.101(a)(3). Clear intent of congress was that no condemnation was applicable, under the Act, if the property owner did not volunteer into the Act, or if negotiations failed, which included any state, or its agent or federal agent thereof then federal funds under the Act could not be used for condemnation.

In New York Dept. of Social Services v Dublins, 413 U S 405, 432 (1973) at page 413, the Supreme Court mandated; to wit:

> "If Congress is authorized to act in a field, it should manifest its intention clearly. It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of federal supremacy is **not lightly**

to be presumed." Schwartz v. Texas, 344 U.S. 199, 202-203 (1952).

The Preemption Doctrine adopted by U.S. Supreme Court holding that certain matters are of such a national, as opposed to local, character that federal laws preempt or take precedence over state laws. As such, a state may **not** pass a law inconsistent with the federal law.

In Pennsylvania v Nelson, 350 U S 497, 520 (1956) the Supreme Court mandated a three prong test for pre-emption status at pages 502-506; to wit:

> "First, "[t]he scheme of Federal regulation [is] so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." Rice v Santa Fe Elevator Corp., 331 U.S., at 230. Second, the federal statutes "touch a field in which the federal interest is so dominant that the federal system [must] be assumed to preclude enforcement of state laws on the same subject." Rice v. Sante Fe Elevator Corp., 331 U.S. at 230 citing Hines v Davidowitz, Supra. Third, enforcement of state sedition

[could read - condemnation] acts presents a serious danger of conflict with the administration of the Federal program.

Pennsylvania id., p. 509, Mr. Justice Jackson wrote:

> "A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudication as are different rules of substantive law." Garner v Teamsters Union, 346 US 485, 490-491; "that Congress has occupied the field to the exclusion of parallel state legislation, that the dominant interest of the Federal Government precludes State intervention, and that administration of state acts would conflict with the operation of the federal plan . . ."

In Hines v Davidowitz, 312 U.S. 52, 81(1941) at p. 62-63 the United States Supreme Court mandated that; to wit:

> "No state can add to or take from the force and effect of such treaty or statute, for Article VI of the Constitution provides that 'This Constitution, and the Laws of the United States which shall be made

in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.'"

The US Court of Appeals, the Third Circuit, stated in Elizabeth Blackwell Health Center for Women v Knoll, 61 F.2d 170, 197 (3rd Cir.1995) at p. 178 § B [2,3] "The Supremacy Clause requires

> **invalidation** of any state Constitutional or statutory provision that conflicts with Federal law, see Reynolds v. Sims, 377 U.S. 533, 584, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), and compel compliance . . . with federal law and regulations . . ."

The United States Supreme Court mandated in Hilton v South Carolina Public Railways Commission, 502 US 197, 214(1991) and described the plain statement rule as "a rule of statutory

> construction to be applied where statutory intent is ambiguous," ibid p. 206 and mandated that:

"And when the rule is either overcome or inapplicable so that a federal statute does impose liability upon the States, the Supremacy Clause makes that statute the law in every State, fully enforceable in state court." Howlett v Rose, 496 U.S. 356, 367-368 (1990). further mandated that

". . . the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by state legislature. The Supremacy Clause makes those laws 'the supreme Law of the Land.'" Howlett,id.

To avoid conflict between state and federal jurisdictions the U.S. Supreme Court mandated in Ex Parte Siebold, 100 US at 371, 399 (Sup.Ct.Oct.1879) p. 390, Mr. Justice Grier, for the court said;

"Every citizen of the United States is also a citizen of a State or Territory, He may be said to owe allegiance to two sovereign and and may be liable to punishment for an infraction of the laws of either. The same act may be an offense or transgression of the

laws of both. 'substantially the same views are expressed in United States v Cruikshank (92 U.S. 542), referred to these cases; and we do not well see how the doctrine they contain can be controverted'."

"The power of Congress, as we have seen, is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulation effected supersede those of the State which are inconsistent therewith."

Siebold id, p. 392 and futher mandated;

"We cannot yield to such a transcendental view of state sovereignty. The Constitution and laws of the United States are the Supreme Law of the Land, and to these every citizen of every State owes obedience, whether in his individual or official capacity."

The United States Supreme Court mandated in Gibbons v Ogden 22 US 1, 240 (February Term, 1824) p. 210-211 to wit:

"...if a law passed by a State, in

the exercise of its acknowledged sovereignty, comes into conflict with a law passed by congress in pursuance of the Constitution they effect the subject, and each other, like equal opposing powers. But the framers of our Constitution foresaw this state of things, and provided for it, by declaring the supremacy not only of itself, but of the laws made in pursuance of it. The nullity of any act, inconsistent with the Constitution, is produced by the declaration, that the Constitution is the Supreme Law. The appropriate application of that part of the clause which confers the same supremacy on laws and treaties, is to such acts of the State legislatures as do **not** transcend their powers, but, though enacted in the execution of acknowledged State powers, interfere with, or are contrary to the laws of Congress, made in pursuance of the Constitution or some treaty made under the authority of the United States. In every such case, the act of Congress or the treaty, is supreme; and the

law of the State, though enacted in the exercise of powers not controverted, must yield to it."

The supremacy of their [general and State governments] respective laws, when they are in opposition, must be settled, McCulloch v The State of Maryland et al, 17 U.S. 316, 437 (1819) p. 405 id, Justice John Marshall, for the court, mandated; to wit:

"...this Constitution, and the laws of the United States which shall be made in pursuance thereof, 'shall be the supreme law of the land,' and by requiring that the members of the State legislatures, and the officers of the executive and judicial departments of the states, shall take the oath of fidelity to it."

In Pollard's Lessee v Hagan, et al, 44 U.S. 212, 235 (Jan.Term 1845) the U.S. Supreme Court mandated; to wit:

"...all Constitutional laws are binding on the people in the new states and the old ones, whether they consent to be bound by them or not. Every constitutional act of Congress is passed by the will of the people of the United States expressed

though their representatives, on the subject matter of the enactment, and when so passed it becomes the supreme law of the land, and operates by its own force on the subject matter, in whatever state or territory it may happen to be."

In Marbury v Madison, 1 U.S. 137, 2 L.Ed 60(1803) the U.S. Supreme court concluded its opinion by mandating; to wit:

"...Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument [covenant with the people thereof]."

The U.S. Supreme Court has consistently held that; to wit: "Where **Rights** are involved there can be **no** rule making or legislation that can abrogate them." Miranda v Arizona, 384 US 436 (1966) at p. 491 id.

The U.S.Supreme Court is again shown in Hale v Henkle, 201 US 43, 26 S.Ct. 370 (1906) at p. 608; to wit: "His power to

contract is unlimited [therefore his power **not** to contract is unlimited]."

The U.S. Supreme Court mandated the U.S. Constitution is the Supreme law of this Land, and further mandated USA Const. Art. VI(6) § 2 the Supremacy Clause that the U.S. Constitution and the Laws made in pursuance thereof, do in fact and in Law, supersede any and all state laws, codes, ordinances, regulations, etc. that are repugnant thereto, when Congress clearly writes its intent on the fact of the Law, 49 CFR Subparts A, B & C. In this case at bar, a conflict exist between Federal Law, 'Act" and state, Mississippi Law.

This Court is mandated, USA Const. Art.III § 2 to use judiciary power to hear and determine cases arising under the U.S. Constitution and the Laws of the United States, and to controversies to which the United States shall be a party, and or between a State, or the Citizens thereof.

THE PROCEEDINGS BELOW

The State of Mississippi, the City of Southaven, unconstitutionally brought an Eminent Domain, condemnation proceedings,

in the Special Court of Eminent Domain DeSoto County, MS, Cause No: CO-94-0462, against this Family's property, in December of 1994. At the threshold of the said proceeding and the Eviction proceeding to follow, the Cockrells' first Petition To Dismiss, was plead under the common-law, specially and **not** generally continually challenging the trial court's lack of subject matter jurisdiction and the court's inability to effect a remedy at law. Cockrells continually plead, and never waived its common defense that the trial court(s) possessed **no** subject matter jurisdiction over the Federal 'Act', an Act of Congress, which specifically set forth that **no** state, state agent or agency, could [not] condemn properties under the "**ACT**" which stated that the Federal Program was '**entirely voluntary.**' As all moneys for the said Federal program was acquired by Federal Grants under the "**ACT**".

The 'Authority' willfully, knowingly, intelligently and maliciously violated the provisions set out by Congress in the said "ACT" Federal Grant, and the Supremacy Clause of the U.S. Constitution

Art. VI § 2 by crossing over Tennessee State line unconstitutionally making 'Agreement' with Southaven, Mississippi, to convey 59 acres of Mississippi real property, purchased with Federal Grant moneys, to Southaven, MS., if Southaven would use its powers of Eminent Domain to acquire the Cockrell real property their minor child was exclusive paramount owner thereof, said real property was judicially protected in a FAMILY TRUST. The said 'Agreement' was not approved or signed off on by the **FAA** or the Secretary of Transportation **"DOT"**. The 'Agreement' violated the Act of Congress, Grant Agreement Page 15 & 16 at item 31 Disposal of Land, which requires real property bought with Federal funds be sold at 'fair market value', approved by the Secretary of Transportation and moneys paid back in the United States Trust Fund to be reinvested into an approved noise compatibility program [Cockrell Appeal Brief I p. 39-40 Miss. Supreme Court No. 97-CA-01073-SCT].

The Authority mandated through the Federal Grant must give 'Assurances' that the Authority would comply with the provisions of the 'Act' under penalty of

perjury 49 CFR Subtitle A § 24.4(a). 49 CFR Subtitle A § 24.4(a)(3) states in part:

> "a federal agency may provide federal financial assistance to a state agency after it has accepted a certification by such state agency."

The Eminent Domain Court, consistently rejected, without oral or written authority, Cockrells said constitutional challenge of lack of subject matter jurisdiction over Cockrell's objections, against their will, the case proceeded to the jury, a judgment was entered 3 March, 1995, see appendix p.64 the Verdict. Said judgment and Jury Verdict was set aside and a new trial ordered by trial court judge 5 April, 1995, appendix p. 60, one of the 12 jurors not being a registered voter of DeSoto County, MS., appendix p. 59.

Eighteen months passed **no** new trial was had. In stead Southaven, Mississippi brought Eviction proceeding, In the County Court of DeSoto County, Mississippi Cause No. CO-96-0086, under MCA § 89-7-29 Tenant Holding Over, attached said Eminent Domain Judgment Order of 3 March, 1995. The Mississippi

Order of 3 March, 1995. The Mississippi Rules of Civil Procedure has no rule for Eminent Domain procedures. At the threshold Cockrells challenged subject matter jurisdiction of the Eviction court over the Federal Program, the Act. Over the Cockrells objection, against their will, the Eviction judge sanctioned Billy Cockrell for pleading Constitutional Law, the Act, Grant, case law, and did in fact enter a Warrant of Removal, 7 October, 1996, removal on or before the 17 day of January, 1997. The Cockrells appealed the Warrant of Removal to the Circuit Court of DeSoto County, MS. see Appendix p.52

Cockrells demanded a common law Jury trial, in the Circuit Court appeal proceeding, as they had not been afforded their demanded jury trial pursuant to USA Constitution Bill of Rights,Art. VII, Thompson v Utah, 170 US 349(1897) as the Seventh Amendment mandated upon the states, by and through the Fourteenth Amendment, Penn.Coal Co. v Mahon, 260 US 393, 422(1922) 414,417, was consistently plead at all levels including Petition For ReHearing En Banc,in the Mississippi Supreme Court p. 4 thereof. The Circuit

Court, Cause No. CV-94-0003C-D stated it was appellate only, denied the demanded common-law jury trial. Cockrells, over their objection and against their will, filed Briefs I & II in compliance with Circuit Court's Orders, briefs included the trial court record of Eminent Domain procedure and Eviction procedure record, oral argument was had.

Circuit Court filed its Order of Affirmance of the Eviction Court's Warrant of Removal 4 September 1997, see appendix p. 54, another Eviction date was scheduled for Monday 6 October, 1997. Cockrells petitioned the Mississippi Supreme Court for a Stay of Execution pending appeal, a Stay was granted, see appendix p. 50.

Cockrells timely perfected their appeal, paid cost, paid for record to be transmitted to the Mississippi Supreme Court, Briefs I and II and timely filed, in cause No:97-CA-01073-SCT. Cockrells plead the trial courts setting aside of the verdict of the 11 person jury, lack of subject matter jurisdiction over 49 CFR Part A, B & C [subpart B § 24.101(a)(3)]. The Mississippi Supreme Court's Order Affirmed the State Circuit

Court's decision on 31 December 1998, pages 4 thereof stated our argument as to lack of subject matter jurisdiction over the 'ACT' was 'not even relevant', see appendix p.34, said Order did **not** give an Eviction date, nor REMAND with instructions of issuing a new timely Warrant of Removal, or Eviction Notice that would comply with the laws of Mississippi, as that Court ignored Cockrells demanded Oral Argument granted to them by that Supreme Court's Rules of Procedure.

Cockrells timely filed a Petition For a ReHearing EN BANC, including a new defense that the Cockrells were not TENANTS HOLDING OVER, Mississippi is devoid of any case law on the subject matter, 13 ALR 5th 169 and seven prevailing case laws of the several states were argued at length.

Without any notice or opportunity whatsoever, without Cockrells knowledge that the Mississippi Supreme Court had denied their Petition For ReHearing, see appendix p.33, at about 3:30 p.m. on Thursday, 4 March, 1999, the DeSoto County Sheriff's Department, MS, the City of Southaven, MS, their SWAT Teams, in

conjunction with City of Memphis, Tennessee, its Police Departments and other multi-jurisdictional task force(s) known and others unknown at this time, sealed off a perimeter around the Cockrell home, tightening the perimeter, with numerous news reporters from numerous television broadcasting stations,and did in fact make a dynamic entry by blowing off the front door of Cockrells home followed by a second blast to interior door.

The Cockrell Family was **not** home. Billy Cockrell arrived home before 10:00 P.M., while approaching his door, the Deputy Sheriff Phillip Cottom handed Mr. Cockrell the expired Warrant of Removal, of 17 January, 1997, appendix p.52. Mr. Cockrell challenged said warrant on its face, as invalid, expired, a violation of his family's FOURTH AMENDMENT RIGHTS, Bekins Moving Vans [Lanier Transfer, Inc. of Memphis, TN] and employees thereof were in the process of packing and loading all the Cockrells household goods, except the clothes on their backs. At the time of the said Constitutional challenge eight SWAT Team members, clothed in black cloth, stuck their eight

AR-15's into Mr. Cockrell's chest and backed him off his Son's private real property, telling him **not** to come back on the property. When, Mrs. Cockrell arrived, both were held under arrest without court order, affidavit of probable cause or oath of affirmation in support thereof, without any warrant whatsoever, expounding the 4th Amendment violations. Cockrells were not served with a denial of the Petition To ReHear, did not know for a fact that one had issued. Cockrells had effectively researched law and issues to stay the Mandate if the Mississippi Supreme Court did deny their REHEARING; was preparing facts and law to continue defense of their appeal which was not thoroughly exhausted at the Mississippi Supreme Court level, through the U.S. Supreme Court. Cockrells noticed the Mississippi Supreme Court, that if they affirmed the Circuit Court's decision, they would timely file a Petition For Writ of Certiorari to this Supreme Court as not to violate Procedural Due Process, Due Process of law or Equal Protection of the Laws. Cockrells could have filed for a stay or supersedeas bond.

It should also be shown that the SWAT Team searched the entire dwelling and made the decisions as to what to pack, wrap or trash. Leaving cherished items in the attic, destroying 12 year old Jeffery's cherished tropical fish and acquariums.

The hired bulldozer operator leveled the Cockrell Family's home of 27 years in just 12 minutes. To date the Cockrell's have not received just compensation.

DeSoto County Sheriff's Department Deputy Phillip Cottom signed a contract with Lanier Transfer, Inc and did in fact, extradite the Cockrell's goods and chattels which remained, out of Mississippi, their home of choice, into a foreign jurisdiction, another state, Tennessee, without extradition papers from the Governor of Tennessee nor Mississippi, without court orders to do so, warrant or probable cause. The Cockrells have been, and are currently being denied access to their possessions locked up, such as prescription medicine, Jeffery's home schooling curriculum, his guitar, and Karata outfit for scheduled lessons, along with the Cockrells's copies of Court documents needed to

perfect this appeal and other court proceedings along with thier Bibles.

Mississippi Supreme Court Mandate was filed 14 April 1999, 40 days after the illegal destruction of the Cockrell home, see Appendix p. 32.

A conflict at law exist involving the constitutionality of an Act of Congress the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, 84 Stat. 1894; amended under 42 USC § 4601 et seq., regulated and implemented under 49 CFR Part 24 A, B & C, conflicting with a state statute, Mississippi, as the said statute MCA § 11-27-5 (1972) conflicts with the U.S. Constitution Art. VI § 2 and the Laws made in pursuance thereof, cited herein. Under USA Constitution Article III § 2, this U.S. Supreme Court is to exercise its judiciary power to resolve constitutional conflict at law, arising under this USA Constitution and the Laws of the United States and in this controversy to which the United States is a party, and or controversies between a State or the Citizens thereof.

Petitioners assert that 28 USC § 2403(a) may apply as a public interest is

drawn into question, by the constitutional challenge shown, as the public interest, is apparent on the face of the shown public law, the 'ACT', that prevents states from condemning, violating and destroying constitutionally protected PROPERTY RIGHTS and the LIBERTY embodied therein, guaranteed Procedural Due Process, Due Process of Law and Equal Protection of the Laws, USA Constitution Bill of Rights XIV, accordingly the constitutionality of the state statute of Mississippi, MCA § 11-27-5 (1972) is of great public interest as the said Act of Congress, conflicts with statutes of Mississippi in violation of the USA Constitution Art. VI § 2, the Supremacy Clause, if MCA § 11-27-5 (1972) is declared unconstitutional then the said statute will be stricken from the Mississippi Codes & Statutes, so other innocent persons i.e. the public will **not** suffer the same plight as this Family.

The need for a conflict, such as presented herein, to be resolved by this Court, is discussed in McCullough V State of Maryland et al., 4 US 316, 4 L.Ed. 579 (1819) the opinion of the court delivered by Justice John Marshall; to wit:

"From this which may be almost termed an axiom, other propositions are deduced as corollaries, on the truth or error of which, and on their application to this [sic] case, the cause has been supposed to depend. These are, 1st. That a power to create implies a power to preserve; 2nd. That a power to **destroy,** if wielded by a different hand, is hostile to, and incompatible with these powers to create and preserve; 3rd. That where this repugnancy exists ***that authority which is supreme must control,*** **not** yield to that over which it is supreme."

REASONS FOR GRANTING WRIT

This Supreme Court should exercise its judiciary power and thereby grant these Petitioners' Petition for Writ of Certiorari to resolve the conflict at law, the constitutionality of a state statute Mississippi Code Annotated MCA § 11-27-5(1972) appendix p. 67, conflicts with the USA Const. Art. VI § 2 when used in relation to or in conjunction with an Act of Congress The Uniform Relocation Assistance and Real Property Acquisition

Policy Act of 1970, 84 Stat. 1894; amended under 42 USC § 4601 et seq., regulated and implemented under 49 CFR Part A, B & C; and to resolve a controversy between a State or the Citizens thereof and to controversies to which the United States shall be a party, and to resolve the Federal question of public interest of the conflict with applicable decisions, **stare decisis**, of this Supreme Court.

CONCLUSION

For all the foregoing reasons, facts and laws herein shown, Petitioner respectfully request this United States Supreme Court and the Justices thereof to grant this Petition as Substantive Rights are involved.

Date: May 28, 1999.

Respectfully submitted
without prejudice,

Billy Hughey Cockrell

Carolyn Virginia Cockrell

William Jeffery Cockrell
P O Box 791
New Albany, MS 38652

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[SEAL]

MANDATE

SUPREME COURT OF MISSISSIPPI

To The DeSoto County Circuit Court -
GREETINGS:

In proceedings held in the Courtroom, Carroll Gartin Justice Building, in the City of Jackson, Mississippi, the Supreme Court of Mississippi entered a final judgment as follows:

Supreme Court Case # 97-CA-01073-SCT
Trail Court Case #CV970003

Billy Hughey Cockrell, Carolyn Virginia Cockrell and William Jeffery Cockrell, A Minor Child v City of Southaven, State of Mississippi

Thursday, 4th day of March 1999
Motion for Rehearing, denied. Pittman, P.J., Not Participating.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

WITNESS, the Honorable Lenore L. Prather, Chief Justice of the Supreme Court of Mississippi; also the signature of the Clerk and the Seal of said Court hereunto affixed, in the City of Jackson, on April 12, 1999, A.D.

/s/ Charlotte B Williams
Clerk

File date: 14 April 1999

SUPREME COURT AND COURT OF APPEALS
STATE OF MISSISSIPPI
Charlotte B. Williams, Clerk
Third Floor Gartin Building
450 High Street
Post Office Box 249
Jackson, Mississippi 39205-0249

March 4, 1999

This is to advise you tha the Mississippi Supreme Court rendered the following decision on the 4th day of March, 1999.

Supreme Court Case #97-CA-01073-SCT
Trial Court Case #970003

Billy Hughey Cockrell, Carolyn Virginia Cockrell and William Jeffery Cockrell, A Minor Child v City of Southaven, State of Mississippi

Motion for Rehearing, denied. Pittman, P.J., Not Participating.

Note: does not bear a signature

[SEAL]
IN THE SUPREME COURT OF MISSISSIPPI
NO. 97-CA-01073-SCT

BILLY HUGHEY COCKRELL, CAROLYN VIRGINIA COCKRELL AND WILLIAM JEFFERY COCKRELL, A MINOR CHILD

v.

CITY OF SOUTHAVEN, STATE OF MISSISSIPPI

Date of Judgment: 09/04/97
Trial Judge: Hon. George Carlson,Jr
Court From Which Appealed: DeSoto County Circuit Court
Attorney for Appellants: PRO SE
Attorney for Appellee: Mark Sorrell
Nature of the Case: Civil-Eminent Domain
Disposition: Affirmed-12/31/98

BEFORE PRATHER, C.J.,BANKS AND McRAE, JJ.

McRAE, JUSTICE, FOR THE COURT:

¶1. Billy Hughey Cockrell, Carolyn Virginia Cockrell and William Jeffery Cockrell appeal the September 4, 1997 judgment of the DeSoto County Circuit Court affirming the issuance of an order of removal by the County Court of DeSoto County pursuant to a judgment entered by the Special Court of Eminent Domain awarding the Cockrells just compensation for their property and vesting ownership of the property in the City of Southaven, Mississippi. Finding no merit to the

assignments of error now raised, we affirm the opinion of the court below.

I.

¶2. By letter dated July 31, 1987, the Memphis-Shelby County Airport Authority's Noise Compatibility Program advised some 1,3000 households in the vicinity of the airport subject to noise levels in excess of 75 Ldn that they were eligible for relocation under a five-year $100 million Property Acquisition Program. The Cockrells were among the families affected by the program. On June 4, 1987 and December 28, 1988, they transferred title to their two lots to their infant son, William Jeffery Cockrell.

¶3. Apparently, the Airport Authority donated some fifty-nine acres of land it had acquired through the Noise Compatibility program to the City of Southaven for use as a public park. The City then sought to acquire, through eminent domain proceedings, three remaining parcels of land which the Airport Authority had been unable to obtain through its negotiated "buy-out" program, including the Cockrell resident, to eliminate non-conforming property usage within the designated park area.

Thus, eminent domain proceedings were instituted by the City of Southaven.[1]

¶4. A jury of the Special Court of Eminent Domain awarded the Cockrells compensation and damages in the amount of $66,000 for their house at 8767 Woodbine Place in the Greenbrook Subdivision of DeSoto County, with judgment entered on March 3, 1995. The Airport's Noise Compatibility Planning Manager sent a check for $68,438.03 to the City's attorney's, payable to the Circuit Court of DeSoto County, for judgment and costs in the Cockrell's case. Although noting that their motion for new trial of j.n.o.v. was neither timely filed nor in proper form, the Special Judge of the Special Court of Eminent Domain granted the motion on March 31, 1995 because of an unqualified juror. That order was set aside by the Special Court in an April 12, 1995 order granting the City's Motion to reconsider and holding the March 3, 1995 judgment to be in full force and effect.

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[1]Many of the facts relevant to the issues now before this Court are not contained within the record and necessarily have been taken the parties'

addenda and appendices.

¶5. Subsequent to the decision of the Special Court of Eminent Domain, the Cockrells filed a series of actions in the united States District Court for the Northern District of Mississippi against the Airport, the City, the Court of Eminent Domain, and various City and Airport officials, alleging a panoply of civil rights violations. Some of these actions were dismissed on January 11, 1996, while the remaining claims were dismissed by the District Court in an opinion, and order filed June 5, 1996. The District Court's various orders were appealed to the Fifth Circuit, where two of the Cockells' appeals were dismissed[2] and in two others, the court affirmed the lower court's orders without written opinion. ***Cockrell v. Memphis-Shelby County Airport Auth.,*** 125 F.3d 851 (5th Cir.1997); ***Cockrell v. Cates,*** 121 F.3d 705 (5th Cir. 1997).

¶6. The city filed an affidavit of Eviction pursuant to Miss.Code Ann. § 89-7-27 on February 7, 1996. An Order

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[2]Two appeals were dismissed by the Fifth Circuit on July 9, 1996 (#96-60099) and November

14, 1996 (#96-60477).

Setting Return Date of Eviction was entered nunc pro tunc September 13, 1996, with a motion hearing and trial set in County Court for October 2, 1996. The County Court, fearing a conflict in interest between the minor child and his father, appointed a guardian ad litem and attorney for him. On October 7, 1996, the County Court entered an Order of Removal, ordering the Cockrells' to put the property in the possession of the City of Southaven by January 17, 1997. At the same time, an order denying the Cockrells' various motions for recusal, dismissal, summary judgment and a jury trial was entered.

¶7. The Cockrells appealed the County Court decision to the Circuit Court of DeSoto County, which, by order dated September 4, 1997, affirmed the lower court's decision and directed that court to issue a warrant of removal not before October 4, 1997, so as to allow the Cockrells time for appeal and to petition to this Court for emergency relief pursuant to M.R.A.P. 8.

II.

¶8. The Cockrells first assert that the

lower courts did not have subject matter jurisdiction over 49CFR§§24.101(a)(3)(A), (B) and (C), which, they contend, protests them from condemnation or eviction. Thus, they assert, "Mississippi's condemnation and eviction law must yield to federal law." They present some six pages of quotations regarding general principles of subject matter jurisdiction and the Supremacy Clause of the United States Constitution and from these disparate sources conclude that "as no Mississippi money was used to purchase the said Cockrell property then the three Mississippi courts below wholly lacked subject matter jurisdiction over 49 CFR Part A,B,C [subpart B § 24. 101 (a)(3)] and the final orders in each said court are void and of no effect."[1] The Appellees do not address the issue. Had the eminent domain and eviction proceedings been brought by a federal agency, jurisdiction would have been

---

[1]The Code of Federal Regulations section to which the Cockrells refer addresses the applicability of acquisition requirements for Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs as issued by the Secretary of

proper in federal court. However, the City of Southaven, and not the Airport Authority, initiated the eminent domain proceedings to acquire the Cockrell property. Further, the Cockrell property was not part of the parcel acquired by the Airport pursuant to the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, 42 U.S.C. § 4601, the federal law to which the Cockrells refer, and later donated to the City. The issue of whether the lower courts had jurisdiction over the federal law, therefore, is not even relevant.

III.

¶9. The Cockrells next appear to assert that the taking of their property was a fraudulent conveyance because neither the State nor the City of Southaven had legal authority to do so because Mississippi has no geographical boundaries pursuant to Miss.Code Ann. §§ 3-3-1 and 3-3-3, which, they contend, dissolved the state boundaries and removed and dissolved the counties "within the dissolved state previously known as Mississippi". In federal court, the Cockrells alleged that the taking was unauthorized since the

City of Southaven was not a municipality because it had defective charter. In his June 4, 1996 Memorandum Opinion, the District Court Judge for the United States District Court for the Northern District of Mississippi, Delta Division, noted that this issue had been addressed in that court's January 11, 1996 opinion (not made a part of this record) and found that the Cockrells had failed to state a claim upon which relief could be granted. The June 4, 1996 opinion was affirmed without written opinion by the Fifth Circuit Court of Appeals in ***Cockrell v. Memphis-Shelby County Airport Authority,*** 125 F.3d 851 (5th Cir. 1997). The state and federal cases brought by the Cockrells have the requisite identity of subject matter, cause of action, parties and persons so as to find that further review of the issue is precluded by the doctrine of res judicata. ***Marcum v Mississippi Valley Gas Co.,*** 672 So.2d 730, 732 (Miss.1996). That the Cockrells have concocted a "new" legal theory upon which to base their claim of "fraudulent conveyance" does not serve to circumvent this bar. ***Little v V & G Welding Supply, Inc.,*** 704 So.2d 1336, 1338 (Miss. 1997).

IV.

¶10 Relying on McCoy v McRae, 204 Miss. 309, 37 So.2d 353 (1948), the Cockrells next assert that the eviction proceedings brought against them were fraudulent because the City, its attorneys and the trial court "each had law knowledge that the alleged tenancy must be in fact created by Contract and not by operation of law." There is no merit to their assertion that because there was no landlord involved, "Mississippi or Southaven was not entitled to recover which was a disputed question or issue of fact for a jury to decide."

¶11. The Cockrells' reliance on ***McCoy*** is misplaced. In that case, a tenancy was created as a matter of law as the result of a foreclosure sale. Whether a landlord tenant relationship existed as a tenancy in fact, as in a contract, rather than by operation of law, was discussed only in the context of whether the tenant was estopped from denying the landlord's title to the property at issue. ***McCoy,*** 204 Miss. at 319, 37 So.2d at 356. It has no bearing on the current controversy.

¶12. Our eminent domain statutes make no provision for holdover tenants. Once the Cockrells made it clear that they were not vacating the property pursuant to the orders of the Special Court of Eminent Domain, the City proceeded under § 89-7-27, which does not require the existence of a contract in order for a landlord to proceed against a tenant or limit its use when the landlord-tenant relationship exists as an operation of law. There is no merit to the assignment of error.

V.

¶13. The Cockrells were afforded a jury trial in the Special Court of Eminent Domain of DeSoto County. In addition to raising again the issue of subject matter jurisdiction, the Cockrells contend that they were entitled to a jury trial for their appeal to circuit court. However, as the circuit court found, pursuant to art. 6, § 156 of the Mississippi Constitution and Miss.Code Ann. § 11-51-79, it was sitting an appellate court and not as the court of original jurisdiction. Neither art. 3, § 31 of the Mississippi Constitution nor M.R.C.P. 38, both of which provide for the right to a jury trial, require that that right

extend to appellate proceedings. There is no merit to this assignment of error.

VI.

¶14. The Cockrells next assert that "the Paramount Owner" of the property, their minor child, had not been paid for compensation for the property and thus could not be evicted. A check for $68,438.03, made payable to the Circuit Court of DeSoto County was deposited by the Memphis Shelby County Airport Authority with the City's attorneys for payment of judgment and court costs in City of Southaven v. Cockrell. The record does not indicate when or whether the funds were paid to the Cockrells. However, they contend that these funds cannot be used to pay them because the Airport Authority is a foreign corporation not registered to do business in Mississippi and thus any contract made with the state of Mississippi is void. From the text of the June 4, 1996 District Court Opinion, it is apparent that the Cockrells presented the same argument against the City and the Airport Authority in federal court, alleging a conspiracy against the plaintiffs wherein the Airport Authority provided money to the City for use in the

eminent domain proceedings against them. The district court's dismissal of these claims was affirmed without written opinion by the Fifth Circuit Court of Appeals in ***Cockrell v. Memphis-Shelby County Airport Authority,*** 125 F.3d 851 (5th Cir.1997). As discussed *supra*, the Cockrells' introduction of a "new" legal theory upon which to base their claim that they did not receive just compensation for their property does not serve to circumvent the preclusive effect of res judicata. ***Little v. V. & G. Welding Supply, Inc.,*** 704 So.2d 1336, 1338 (Miss.1997). Notwithstanding the absence of evidence in the record that the Cockrells did not receive just compensation, the matter was resolved by its dismissal in federal court.

VII.

¶15. The Cockrells next contend that only the chancery court had jurisdiction over their minor child, Jeffery Cockrell, since the property at issue was in his name, and thus, the actions in the court of eminent domain as well as "the eviction court" should have dismissed the case or transferred it to chancery court. While art. 6, § 159 of the Mississippi

Constitution provides the chancery court with jurisdiction over minor's business, the Legislature has the power, "*as parens patriae*, to prescribe such rules and regulation as may be proper for the management, superintendence and disposition of the property of infants, lunatics and persons who are incapable of managing their own affairs." ***Louisville, New Orleans & Texas By. v. Blythe,*** 69 Miss. 939, 947, 11 So. 111 (1892) (Legislature did not exceed its authority in providing for taking of property and compensation therefore by railroad upon agreement with guardian of minor child who owns real property). Further, the Special Court of Eminent Domain, in which this case originated, is a special court sitting only to hear matters of eminent domain. There is no authority limiting its jurisdiction in those instances where the subject property is owned all or in part by a minor, nor do the Cockrells cite any.[4]

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[4]Former Miss. Code Ann. § 11-27-9, repealed July 1, 1991, provided for notice in situations where condemned land was owned by infant, person of unsound mind, a nonresident or deceased person, inferring that, indeed, Special Court of Eminent

Domain, has jurisdiction over all matters involving eminent domain, regardless of whether the landowner has reached the age of majority.

¶16. The Cockrells do not seriously argue the jurisdiction issue instead devoting the bulk of this assignment of error to a diatribe against the court system. The gravamen of their argument appears to be that the court have failed to protect citizens from "the **ESAU-EDOM-RED-DEMON of Communism,** "that the concept of eminent domain is unconstitutional, being instead the work of the Antichrist, and that their cases should have been transferred and the judges more watchful "for the Constitutional Rights of the Cockrell Family and the USA CONST. BILL OF RIGHTS ART. 1 RELIGIOUS RIGHTS but favored the rich Authority instead which breached i.e. perjured their oaths of office and violated the laws of God and invoked a 'curse' upon those who violated the said laws, the sins of removing the landmark was punishable by death. "(various emphases in original). This Court is to find any merit in the assignment of error.

VIII.

¶17. The Cockrells finally argue that

pursuant to ***Graham v State,*** 196 Miss. 382, 17 So.2d 210 (1944), it is the duty and obligation of this Court to determine whether we have subject matter jurisdiction in those cases where lack of subject matter jurisdiction is suggested by the record or apparent from geographical, historical or other facts. ¶18. Article 6, section 146 of the Mississippi Constitution of 1890 vests this Court with "such jurisdiction as properly belongs to a court of appeals.." It is thus within the purview of this Court to hear the appeal from circuit court brought by the Cockrells. There is nothing in the record to suggest otherwise nor is there any basis for us, as the Cockrells urge, to "respond in a written document and set forth with particularity the exact defined boundaries of the state [sic] of Mississippi as set forth in the Miss. Const. of 1996 [sic] and as set forth in Miss. Code Annotated MCA § 3-3-1 & 3-3-3."[5]

---

[5]While the Cockrells limit their argument about the dissolution of Mississippi's boundaries on appeal, they stated in their appeal to circuit

court that:

Mississippi is only one of numerous other states which have repealed, dissolved an deleted its state boundaries and relinquished its state sovereignty to the 'NEW WORLD ORDER' to set up the Ten Federal Districts [i.e. the Ten Horns of Daniel's Revelation Holy Bible, Daniel 7:7, Revelation 17:12] on Federal Zone One under the United Nations. The state boundaries of the fifty sovereign states of the United States of America must be repealed, dissolved or deleted to relinquish state sovereignty to the United NATIONS to set up ONE WORLD GOVERNMENT..."

IX.

¶19. Finding no merit to the assignments of error raised by the Cockrells, we affirm the decision of the court below.

¶20. **AFFIRMED**

PRATHER, C.J., SULLIVAN, P.J., BANKS, ROBERTS, SMITH, MILLS AND WALLER,JJ., CONCUR. PITTMAN,P.J., NOT PARTICIPATING.

IN THE SUPREME COURT OF MISSISSIPPI
NO. 97-M-01073

BILLY HUGHEY COCKRELL, CAROLYN VIRGINIA COCKRELL AND WILLIAM JEFFERY COCKRELL, A MINOR CHILD

Appellants

v.

CITY OF SOUTHAVEN

Appellee

ORDER

This matter came before a panel of this Court consisting of Chief Justice Lee, Justice Pittman, and Justice Mills on the Emergency Verified Petition to Stay Execution and Enforcement of Judgment Pending Appeal Memorandum at Law with Exhibits filed by the Appellants. The Appellants request that this Court stay the order of the Circuit Court of DeSoto County which affirmed the warrant of removal issued by the County Court of DeSoto County. The Court finds that a response from the Appellee is necessary and that the matter should be stayed pending further order of this Court.

IT IS THEREFORE ORDERED that the Appellee file a response to the Emergency Verified Petition To Stay Execution and Enforcement of Judgment Pending Appeal Memorandum at Law with Exhibits on or

before October 13, 1997. This matter is stayed pending further order of this Court.

SO ORDERED, this, the 1st day of October, 1997.

/s/ Dan Lee
DAN LEE, CHIEF JUSTICE
FOR THE COURT

File date: 3 October 1997

IN THE COUNTY COURT OF DESOTO COUNTY, MISSISSIPPI

CITY OF SOUTHAVEN, STATE OF MISSISSIPPI

VS. NO. CO-96-0086

BILLY H. COCKRELL, CAROLYN V. COCKRELL AND WILLIAM JAY COCKRELL, A MINOR

WARRANT OF REMOVAL

TO THE SHERIFF OF DESOTO COUNTY, MISSISSIPPI
GREETINGS:

CAME NOW on this day for trail by the Court without a jury and the defendants not having filed any affidavit denying the facts alleged by the City of Southaven, Mississippi, and the court having received evidence and being fully advised in the premises does ORDER, ADUDGE AND DECREE that:

1. This Court does hereby command the Sheriff of DeSoto County, Mississippi to put the City of Southaven, Mississippi into possession of the premises located at "Lot 325, Section B revised, Greenbrook Subdivision as shown in Plat thereof recorded in Plat Book 8, Pages 51 and 52 of the Subdivision Plat Records of the Chancery Court of DeSoto County, Mississippi" by January 17, 1997.

2. The Sheriff shall levy the cost of the proceedings herein upon the goods and chattels of Billy H. Cockrell and Carolyn Cockrell if these costs are not paid to the Clerk herein by January 17, 1997.

3. Further the sheriff shall levy and collect the costs of the Guardian at Litem herein, William Meyers, from and against the goods and chattels of Billy H. Cockrell and Carolyn Cockrell, in the amount of seven hundred one and 50/100 Dollars ($701.50) if same has not been paid within thirty days of the date of this order.

4. Further this Court specifically retains jurisdiction to enforce this warrant of removal and order by proceedings of contempt.

ORDERED AND ADJUDGED this the 7th day of October, 1996, nunc pro tunc September 25, 1996.

/s/ unreadable
SPECIAL PRESIDING JUDGE

File date: 9 October 1996

IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI

BILLY H. COCKRELL, CAROLYN V. COCKRELL, and WILLIAM J. COCKRELL, A Minor Child — APPELLANTS

vs.

CITY OF SOUTHAVEN, STATE OF MISSISSIPPI — APPELLEE

ORDER OF AFFIRMANCE

Feeling aggrieved by an adverse ruling of the County Court of DeSoto County in cause number CO-96-0086 on the docket of that Court, the Appellants, Billy H. Cockrell, Carolyn V. Cockrell, and William J. Cockrell, a minor child (hereinafter referred to as "**the Cockrells**"), appearing, **pro se**, have appealed to this Court pursuant to MCA Sec. 11-51-79. After the submission of briefs by the parties, the Court held and conducted oral arguments on August 29, 1997, at the DeSoto County Courthouse in Hernando. At the conclusion of oral arguments, the Court took this matter under advisement. The Court has considered (1) all documents on file in cause number CO-96-0086 on the docket of the County Court of DeSoto County (2) all

documents on file in cause number CO-94-0462 on the docket of the Special Court of Eminent Domain, DeSoto County, Mississippi (3) all documents on file in this cause (4) the transcript of the hearing conducted in cause number CO-96-0086 on October 2, 1996 (5) the briefs submitted by the parties, and (6) the applicable law. The Court also incorporates herein by reference all opinions and orders entered in this cause from February 7, 1997 to the present date. In so doing, the Court, finding no prejudicial error, is compelled as a matter of law to affirm the final decision of the County Court of DeSoto County, Mississippi in cause number CO-96-0086 wherein the County Court issued a warrant of removal from the subject premises upon hearing and pursuant to a final judgment entered by a special court of eminent domain thereby awarding the Cockrells just compensation and vesting ownership of the Cockrells' property in the City of Southaven.

If the Cockrells desire to appeal this Court's final decision to the Supreme Court of Mississippi they must file a notice of appeal with the Clerk of

this Court within thirty (30) days of the entry of this Order pursuant to MRAP 3(a) and MRAP 4(a); file with the Clerk of this Court a designation of record within seven (7) days after filing the notice of appeal, pursuant to MRAP 10(b)(1); pay to the Clerk of this Court all cost of appeal within seven (7) days after filing the notice of appeal, pursuant to MRAP 11(b)(1); and, file a certificate of compliance with the Clerk of this Court, simultaneously with the payment of the cost of appeal, pursuant to MRAP 11(b)(1). Additionally, the Cockrells must strictly adhere to the Mississippi Rules of Appellate Procedure concerning furnishing copies of the aforesaid documents to the persons so designated in accordance with the provisions of MRAP 4(a), MRAP 10(b)(1), and MRAP 11(b)(1).

Inasmuch as this case is based on a warrant of removal issued pursuant to an eminent domain jury awarding just compensation to the Cockrells and the eminent domain court vesting ownership of the subject property in the City of Southaven, which action by the special court of eminent domain was never appealed by the Cockrells, the Court is

without statutory authority to grant a stay of execution pending appeal [see MCA Sec. 11-27-29 (Supp.1997)], notwithstanding the provisions of MRAP 8. The Cockrell's main arguments all along have been (and evidently will continue to be on appeal) that they are entitled to prevail because the State of Mississippi does not exist, the City of Southaven does not exist, and this Court does not exist. The Court is constrained as a matter of law to deny any anticipated request by the Cockrells for a stay of execution or a supersedeas bond, and to further direct the Sheriff of DeSoto County or any lawful officer to execute on this order and the heretofore issued county court warrant of removal, but not before Monday, October 6, 1997, so as to enable the Cockrells to comply with the appeal requirements and to have the opportunity to petition the Supreme Court of Mississippi for emergency relief pursuant to MRAP 8.

The Cockrells are taxed with all costs of this appeal from the county court of DeSoto County, for which let execution and other process of this Court issue.

Except as to matters of appeal on which this Court may have to decide, or as directed by the Supreme Court of Mississippi or the Mississippi Court of Appeals, this cause is remanded to the County Court of DeSoto County for enforcement of its warrant of removal consistent with the provisions of this Order.

The Clerk of this Court should forthwith mail certified copies of this Order to the following persons: Billy H. Cockrell, Carolyn V. Cockrell and William J. Cockrell, 8767 Woodbine Drive, Southaven, MS 38671; Mark K. Sorrell, Attorney for Southaven, P.O. Box 188, Southaven, MS 38671-0188; William P. Myers, Guardian Ad Litem, 2564 Highway 51 South, Hernando, MS 38632; Judge Richard A. Smith, P.O. Box 452, Greenwood, MS 38935-0452; and, Sheriff James Albert Riley, 311 South Street, Hernando, MS 38632.

SO ORDERED this the 4th day of September, 1997.

/s/not legible
George C. Carlson, Jr.
Circuit Judge

File date: 4 September 1997

JEANETTE B. MARTIN
DeSoto County Courthouse
2535 Highway 51 South
Hernando, Mississippi 38632

February 24, 1995

Honorable Joe Webster
County Court Judge
P O Box 756
Clarksdale, MS 38614

Dear Judge Webster:

This will confirm what I told you yesterday about one of the jurors in the eminent domain case tried Monday and Tuesday, February 21 & 22, of this week in cause #94-0462, Southaven V Cockrell et al.

When our office began preparing to send the jurors their pay for service, it was discovered that one of the twelve (12) jurors, who was selected to try the case, is a resident of DeSoto County, MS, but at the time of the trial not a registered voter of this county. That juror registered to vote here years ago, moved to Calhoun County and in May of last year registered to vote there. Upon returning to DeSoto County, that juror, at least as far as we can determine at this time, has not re-registered here.

As you requested, we are sending a copy of this letter to all parties.

Sincerely,
/s/ Jeanette B. Martin

Copy: Mr. Taylor Buntin and the Cockrells
Mr & Mrs Billy Cockrell & family

IN THE SPECIAL COURT OF EMINENT DOMAIN
DESOTO COUNTY, MISSISSIPPI

CITY OF SOUTHAVEN, MISSISSIPPI

PLAINTIFF

VS. Cause No. C094-0462

BILLY H. COCKRELL, ET AL DEFENDANTS

O R D E R

THE COURT having considered the pleadings filed herein by the Defendants, hereinafter referred to as the Cockrell Family, and also having reviewed and considered the responses thereto filed by the Petitioner, City of Southaven, Mississippi, hereinafter referred to as The City and the Court also being appraised as to certain irregularities with reference to one of the Jurors who returned a verdict herein is of the opinion as follows:

The post trial pleadings filed on behalf of the Cockrell Family, while not in the proper form, amount to a Motion For A New Trial and a Motion for Judgment Not Withstanding the Verdict. The Court is further aware of the position of the Petitioner that said motion based on the letter dated February 24, 1995 from Jeanette B. Martin, Circuit Clerk of

DeSoto County, Mississippi, a copy of which is attached hereto as exhibit A, feels that this court is compelled to review the issue of whether a new trial should be proper in this case.

At the outset, however, the Court again states that it is not concerned with a great deal of the rambling argument over issues which have been hashed and rehashed throughout these preceedings and have been repeatedly argued by the Cockrell Family. The Court is of the opinion that the trial itself proceeded without error except for the one issue with reference to an unqualified juror and that issue causes the Court sufficient concern to Order a New Trial in this matter; however, the LIS PENDENS notice file the Chancery Court of DeSoto County, Mississippi, will remain in effect.

There are additional issues which the Court also feels inclined to address. First, at least ten days prior to the retrial of this matter the Court will enter an Order appointing a Guardian Ad Litem to protect the interest of the minor child during the trial itself and be available to assist the Cockrell

Family during all In Court preceedings. The Court will adhere to the stated desire of the Cockrell Family in that the Guardian Ad Litem will not negotiate for or advise the Cockrell Family or the minor child unless specifically asked to be of assistance by the Cockrell Family. The roll of the Guardian Ad Litem will be limited to trial participation only, unless the Cockrell Family advises the Court in writing that the family no longer opposes pre-trial legal assistance by the Guardian Ad Litem at which time the Court will consider an expanded roll for the Guardian Ad Litem.

Secondly, the Court will allow the Cockrell Family to call an expert witness to testify as to the value of the property in question; provided, any such witness is a property in question; provided, any such witness is a licensed, qualified professional real estate agent/appraiser and that such persons name and any and all reports, appraisals, etc., are furnished to the City at least 15 days prior to trial.

Thirdly, the Court will not entertain or hear any further motions filed by either party and any motion filed by

either side is deemed out of time and thereby overruled unless the Court deems otherwise and gives notice to both sides that it desires submission of legal authority or oral argument on the same.

IT IS THEREFORE ORDERED AND ADJUDGED that a New Trial be granted in the above style and number cause subject to the terms and conditions set forth above and that the LIS PENDENS notice shall remain in effect pending further order of this Court.

SO ORDERED AND ADJUDGED on this 31st day of March, 2995.

/s/ Joe C. Webster
JOE C WEBSTER
SPECIAL JUDGE OF THE
SPECIAL COURT OF EMINENT
DOMAIN DESOTO COUNTY,
MISSISSIPPI

File date: 5 April 1995

IN THE SPECIAL COURT OF EMINENT DOMAIN,
DESOTO COUNTY, MISSISSIPPI

CITY OF SOUTHAVEN, MISSISSIPPI
PETITIONER

VS. CAUSE NO. CO-94-0462

BILLY H. COCKRELL, ET AL DEFENDANTS

JUDGMENT

BE IT REMEMBERED in this case the claim of the City of Southaven Mississippi to have condemned certain lands named in the Complaint, to-wit:

> Lot 325, Section B revised, Greenbrook Subdivison as shown in Plat thereof recorded in Plat Book 8, Pages 51 and 52 of the Subdivision Plat Records of the Chancery Clerk of DeSoto County, Mississippi.

Being the property of Billy H. Cockrell, Carolyn V. Cockrell, William Jeffery Cockrell, and Dorothy Johnson, Trustee, was submitted to a jury composed of Janice Lynn Robinson, Gerald Phillip Conlee, Robert L. Feasel, Richard Lewis Crawford, Antonio Pierina, Erwin Eugene Alexander, Shirley A. Taylor, Sonya Gail Bryant, Laura Lee Phillips, Laura Rigby Satchfield, Rebecca Ann Burrow, and Betty J. Pike on the 22nd day of February, A.D. 1995, and the jury returned a verdict

fixing said Defendant's compensation and damages at $66,000.00, and the verdict was received and entered. Now upon payment of the said award, with legal interest from the date of the filing of the Complaint, ownership of the said property shall be vested in the Plaintiff and it may be appropriated to the public use as prayed for in the Complaint. Let the Plaintiff pay the costs, for which execution may issue.

SO ORDERED AND ADJUDGED this the 2 day of March, 1995.

/s/ Joe C. Webster
JUDGE, SPECIAL COURT OF EMINENT DOMAIN

File date: 3 March 95

"We the jury, find that the Defendants, Billy H. Cockrell, Carolyn V. Cockrell, William J. Cockrell and Dorothy Johnson, as Trustee of that certain Revocable Trust created on April 10, 1987, will be damaged by the acquisition of their property for public use, in the sum of $66,000.00".

Verdict

filed 22nd Day of February, 1995
Jeanette B. Martin
Circuit Court Clerk DeSoto County

City of Southaven V.
Cockrell, et al
Cause No. CO94-0462

Filed 17th Day of February, 1995
Jeanette B. Martin
Circuit Court Clerk DeSoto County

MCA § 11-27-5. Petition to condemn - parties - preference.

Any person or corporation having the right to condemn private property for public use shall file a petition to condemn with the circuit clerk of the county in which the affected property, or some part thereof, is situated and shall make all the owners of the affected property involved and any mortgagee, trustee, or other person having any interest therein or lien thereon a defendant thereto. The petition shall be considered a matter of public interest and shall be preference case over other cases except other preference causes. The petition shall describe in detail the property sought to be condemned, shall state with certainty the right to condemn, and shall identify the interest or claim of each defendant.

SOURCES: Codes, 1942, § 2749-03; Laws, 1971, ch. 520, § 3, eff from and after January 1, 1972.